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DePaul Journal of Art, Technology & Intellectual Property Law

Volume 6
Issue 2 *Spring 1996*

Article 10

Pfister v. Shusta, 657 N.E.2d 1013 (Ill. 1995)

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657 N.E.2D 1013 (ILL. 1995).

INTRODUCTION

Sean Pfister ("Pfister"), a college student, sued another student Terry Shusta ("Shusta") for negligence due to injuries he sustained in an informal can kicking game conducted in the lobby of a college dormitory. The Illinois Circuit Court of McLean County granted summary judgment for Shusta. Pfister appealed, and on review, the Illinois Appellate Court for the Fourth District reversed the circuit court's order in favor of Shusta. The Supreme Court of Illinois held: (1) under the contact sports exception, participants in contact sports are not liable for injuries caused by ordinary negligence, and (2) because the can kicking game was a contact sport, Shusta could not be held liable for injuries caused by the simple negligence alleged in Pfister's complaint.

FACTS

Plaintiff Sean Pfister and defendant Terry Shusta were college students at Illinois State University. While waiting in a dormitory lobby for friends, Pfister, Shusta and two other students spontaneously began kicking a crushed aluminum soda can. The four students divided into two teams, with two persons on each team, and set up informal goals against the walls of the dormitory lobby. Each team attempted to kick the crushed can into the opposing team's goal. Pfister allegedly pushed Shusta toward a wall in an attempt to gain control of the can. Shusta responded by allegedly pushing Pfister, causing Pfister to fall. While attempting to break his fall, Pfister put his left hand and forearm through the glass door of a fire extinguisher case on the wall of the dormitory. Pfister sustained injuries to his left hand and forearm.

Pfister brought suit against Shusta claiming that his injuries were caused by Shusta's negligence. In response, Shusta filed a motion for summary judgment contending that the activity at issue constituted a contact sport, and therefore, he could not be held liable for injuries caused by simple negligent conduct. The circuit court granted Shusta's motion for summary judgment, finding that the activity at issue fell within the contact sports exception to liability based on the standard of ordinary care applicable to negligence cases. Pfister appealed the summary judgment order, and the appellate court reversed. The Supreme Court of Illinois allowed the defendant's petition for leave to appeal.

LEGAL ANALYSIS

The main issue before the court was whether the contact sports exception to liability premised on negligence was applicable, therefore barring recovery for simple negligence. The court first analyzed the evolution of the contact sports exception. The court recognized that generally, a person owes a duty of care to

guard against injuries to others that may result as a reasonably probable and foreseeable consequence of negligent conduct.[1] However, the court then noted that the contact sports exception is a judicially created exception which holds that voluntary participants in contact sports are not liable for injuries caused by simple negligent conduct; however, they owe each other a duty to refrain from willful and wanton, or intentional, misconduct and are liable for injuries caused by willful and wanton misconduct.[2]

The appellate court created the contact sports exception in *Nabozny v. Barnhill*.[3] In *Nabozny*, the court held that a participant would be liable for injuries caused during a sports game if the participant's conduct was "either deliberate, wil[l]ful or with a reckless disregard for the safety of the other player . . . ."[4] The court further noted that since *Nabozny*, Illinois appellate courts have applied the willful and wanton standard to cases in which participants in both formal and informal sporting activities were injured as a result of the conduct of their co-participants.[5]

The court next addressed the definition of willful and wanton conduct. The court stated that this conduct is defined as a "course of action which shows actual or deliberate intent to harm or which, if the course of action is not intentional, shows an utter indifference to or conscious disregard for a person's own safety or the safety or property of others."[6] Further, willful and wanton conduct is "a hybrid between acts considered negligent and behavior found to be intentionally tortious."[7]

The supreme court then addressed the standard applied by the appellate court in the case at bar. The appellate court abandoned the willful and wanton standard and instead applied the following five-part factual inquiry: (1) was the activity at issue a game; (2) was it played in an appropriate area; (3) did the game have rules or usages; (4) did the rules or usages permit the bodily contact which occurred; and (5) did the injury to the plaintiff arise from the contact which was permitted by the rules.[8] The supreme court noted that the appellate court's approach was based on the *Restatement (Second) of Torts*, as well as upon dicta in a Supreme Court of Illinois decision, *Osborne v. Sprowls*.[9] The court here noted that under this characterization, a contact sport and the concurrent determination of whether the conduct that caused injury was willful and wanton are irrelevant.

Ultimately, the supreme court declined to adopt the approach of the appellate court. The court stated that due to the spontaneous and disorganized nature of the

1. Widlowski v. Durkee Foods, 562 N.E.2d 967, 968 (Ill. 1990).
2. Pfister v. Shusta, 657 N.E.2d 1013, 1015 (Ill. 1995).
3. 334 N.E.2d 258 (Ill. App. Ct. 1975).
4. *Id.* at 261.
5. *Pfister*, 657 N.E.2d at 1015-16.
6. *Id.* at 1016.
7. *Id.* (quoting Ziarko v. Soo Line R.R., 641 N.E.2d 402, 406 (Ill. 1994)).
8. *Id.* (citing Pfister v. Shusta, 627 N.E.2d 1260, 1264 (Ill. App. Ct. 1994)).
9. 419 N.E.2d 913, 918 (Ill. 1981) ("Clearly, it may be negligent to play in areas inappropriate for such activity.").

kicking game, it did not appear that rules were formulated governing the permissible physical contact among participants in this case. Such a lack of rules made the appellate court's approach unworkable in this context. Further, the court noted that even in those cases where rules govern the permissible degree of physical contact among the participants of a game, it is difficult to determine what may be an acceptable amount of physical contact allowed by the rules. Rule infractions are almost inevitable in games where physical contact is inherent, and this justifies a different standard of care. The court also justified its rejection of the appellate court's approach by noting that "the contact sports exception to liability based on failure to exercise ordinary care offers a practical approach that is also supported by common sense."[10] The relevant inquiry should be "whether the participants were involved in a contact sport, not whether the sport was formally organized or coached."[11]

The court then applied the contact sports exception to the facts. The court noted that, in the instant case, the participants engaged in informal action equivalent to soccer or floor hockey. Participants of such sports where physical contact is "virtually inevitable[] assume greater risks of injury than nonparticipants or participants in noncontact sports."[12] Hence, the court held that, "[r]ecovery will be granted for injuries sustained by participants in contact sports only if the injuries are caused by wil[l]ful and wanton or intentional misconduct of co-participants."[13] In the instant case, Pfister did not allege willful or wanton, or intentional, misconduct. Therefore, the supreme court concluded that the circuit court properly applied the contact sports exception bar to liability for injuries caused by the simple negligence alleged in the plaintiff's complaint.

Lastly, the court addressed Pfister's argument for the adoption of the duty of ordinary care for participants in contact sports. Pfister contended that such an approach is supported by Illinois public policy. The policy is one of refusing "to immunize negligent conduct in order to promote socially beneficial policies such as the promotion of participation in athletic events."[14] However, the court rejected this approach. The court held that the contact sports exception "strikes the appropriate balance between society's interest in limiting liability for injuries resulting from physical contact inherent in a contact sport and society's interest in allowing recovery for injuries resulting from wil[l]ful and wanton or intentional misconduct by participants."[15] The court noted that the contact sports exception takes into account the voluntary nature of participation in games where physical contact is anticipated and where risk of injury caused by this contact is inherent. Therefore, the court rejected Pfister's alternative argument that Illinois public policy supports the adoption of the duty of ordinary care for participants

10. Pfister v. Shusta, 657 N.E.2d 1013, 1017 (Ill. 1995).

11. *Id.* (citing Keller v. Mols, 509 N.E.2d 584 (Ill. App. Ct. 1987)).

12. *Id.* (citing Oswald v. Township High School District No. 214, 406 N.E.2d 157, 159 (Ill. App. Ct. 1980)).

13. Pfister v. Shusta, 657 N.E.2d 1013, 1017 (Ill. 1995).

14. *Id.* at 1018.

15. *Id.*

in contact sports.

CONCLUSION

The Supreme Court of Illinois reversed the judgment of the appellate court and affirmed the grant of summary judgment of the circuit court, holding that Pfister failed to state a viable cause of action because he failed to allege willful and wanton, or intentional, misconduct by Shusta. The court reasoned that the can kicking game at issue fell under the contact sports exception, which relieves participants in contact sports from liability based on ordinary negligence. Further, the court rejected Pfister's argument that Illinois public policy supports the adoption of the duty of ordinary care for participants in contact sports.

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